



Department of Justice
Canada

Ministère de la Justice
Canada

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FOR INFORMATION

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TITRE/TITLE: **Impaired Driving (Alcohol)**

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- This note provides an overview of former Bill C-73, the *Dangerous and Impaired Driving Act*. Steven Blaney (Conservative - Bellechasse - Les Etchemins - Lévis), who is third on the list of eligibility to introduce a Private Member's item, gave notice on February 19 of a Bill having the same long title as Bill C-73.
- Bill C-73 proposed to modernize all transportation offence provisions by repealing the existing provisions and creating a new Part of the *Criminal Code* to simplify and harmonize the provisions, including the penalties; and facilitate effective and efficient investigation and prosecution of alcohol-impaired driving.
- The Bill was the result of significant consultation with the provinces and territories, with the goal of modernizing the impaired driving regime in the *Criminal Code*, which has become overly complex due to piecemeal reforms.
- [REDACTED] for impaired driving offences involving death. Mothers Against Drunk Driving Canada also expressed disappointment that the Bill did not include random breath testing and did not specifically address drug-impaired driving.
- Many elements of the former Bill are consistent with your mandate to "undertake modernization efforts to improve the efficiency and effectiveness of the criminal justice system, in cooperation with provinces and territories."

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MEMORANDUM FOR THE MINISTER

Impaired Driving (Alcohol)

ISSUE

This note provides an overview of former Bill C-73, the *Dangerous and Impaired Driving Act*. Steven Blaney (Conservative - Bellechasse - Les Etchemins - Lévis), who is third on the list of eligibility to introduce a Private Member's item, gave notice on February 19 of a Bill having the same long title as Bill C-73.

BACKGROUND

The *Criminal Code* provisions relating to impaired driving have become overly complex and difficult to apply due in large part to successive piecemeal reforms. They have also been subject to such extensive litigation that it is difficult in some cases to understand how they operate simply by reading the provisions. This has, in turn, impacted the effective and efficient investigation, prosecution, and sentencing of these cases.

Several initiatives in the past number of years have highlighted the necessity for reform. The Standing Committee on Justice and Human Rights held hearings on alcohol-impaired driving in 2008 and 2009. In its report "Ending Alcohol-Impaired Driving: A Common Approach," it made seven unanimous recommendations that required amendments to the *Criminal Code*. The Report is attached at Annex 1. The former government accepted the recommendations and committed to developing a comprehensive set of reforms, referring to work already underway by Federal-Provincial-Territorial (FPT) officials on simplifying and modernizing the impaired driving provisions of the *Criminal Code*.

The Department of Justice issued a Discussion Paper in 2010 seeking feedback on 20 reform options. The Discussion Paper proposed [REDACTED] that such extensive amendments were required and that it was preferable to repeal and substitute all the existing provisions regarding transportation offences and create a new Part of the *Criminal Code*. [REDACTED]

In June 2015, the previous government introduced Bill C-73, the *Dangerous and Impaired Driving Act*, [REDACTED]

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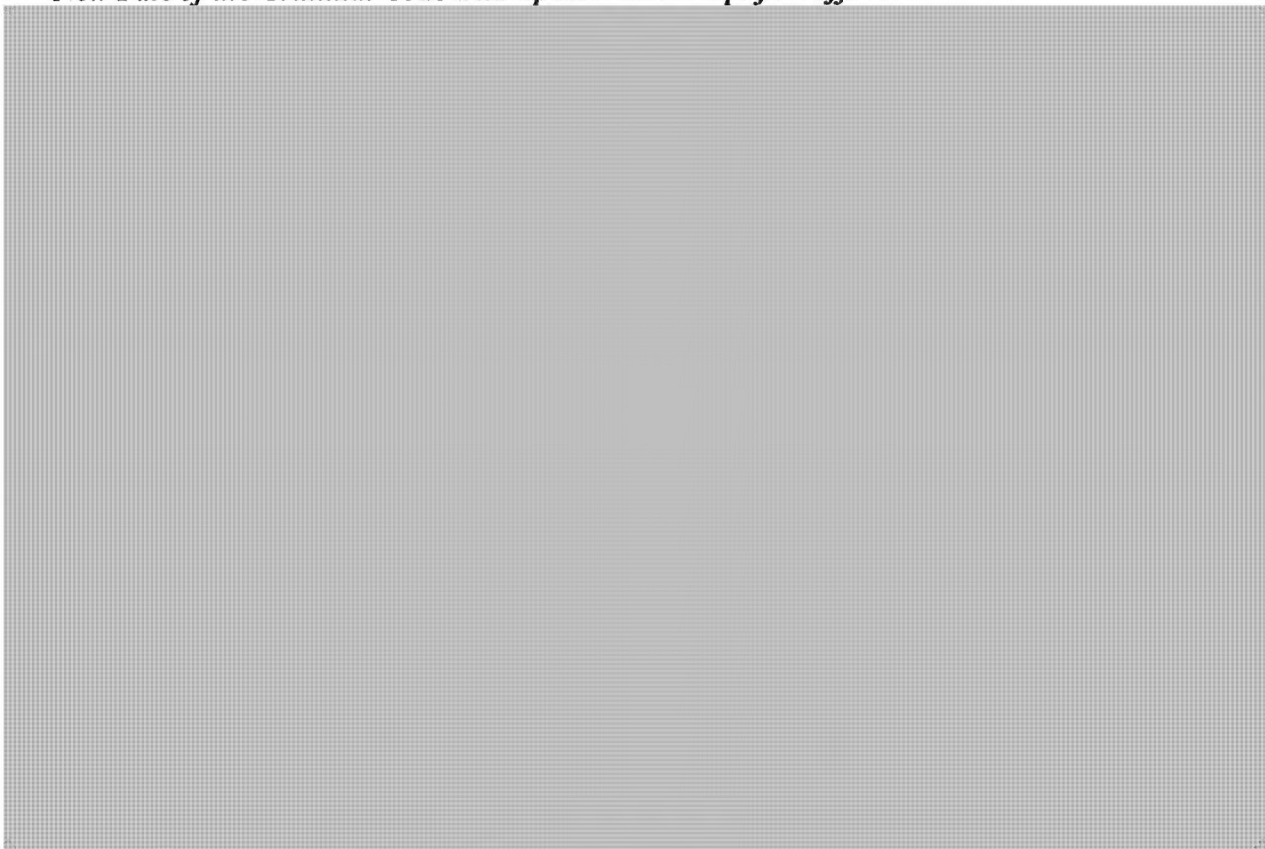
CONSIDERATIONS

Former Bill C-73

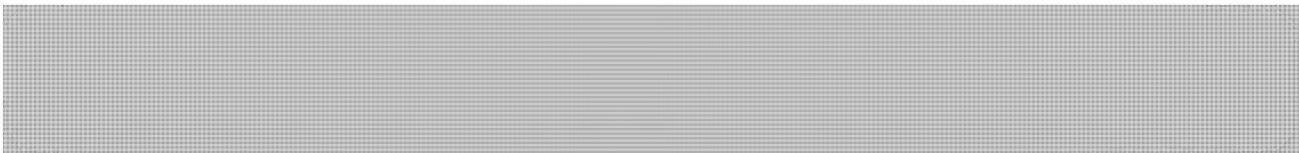
Former Bill C-73 would have modernized all transportation offence provisions by repealing the existing provisions and creating a new Part of the *Criminal Code* that would have:

- simplified and harmonized the provisions;
- strengthened the penalties, particularly for certain repeat offenders;
- harmonized the penalties across all transportation offences; and
- facilitated effective and efficient investigation and prosecution of impaired driving offences including clarification of what was required to prove blood alcohol content (BAC) and what material with respect to breath testing the Crown had to disclose.

New Part of the Criminal Code with updated and simplified offences



The Bill also proposed higher MMPs for several offences, including an MMP of six years for impaired driving causing death.



The former Bill also provided that any previous transportation offence was to be treated as a prior offence to any subsequent transportation offence for the purpose of sentencing repeat offenders, and proposed to codify a list of aggravating factors for the purpose of sentencing.

Investigation and proof of impaired driving

Bill C-73 proposed to facilitate the investigation and prosecution of alcohol-impaired driving. For example, it proposed the creation of a list of factors that constitute reasonable suspicion of alcohol in the body, and would have expanded the timeframe for which police officers can apply for a warrant to obtain a blood sample from four hours to eight hours.

The Bill also proposed to simplify the proof of BAC by making the breath result on an approved instrument (AI) (i.e., breathalyser) conclusive proof of BAC at the time of testing if the prosecution can prove that the AI was in proper working order. The Bill would have also legislated a formula for calculating BAC if the breath sample was taken outside of the two hour window. This formula was based on evidence regarding the rate at which humans eliminate alcohol.

In addition, the Bill aimed to clarify the disclosure requirements with respect to proof of BAC. In the wake of the Supreme Court of Canada (SCC) decision in *R. v. St-Onge*, the issue of what the Crown is required to disclose to the defence with respect to the AI has been subject to some confusion. The SCC had suggested that maintenance records of the AI were relevant despite overwhelming scientific evidence to the contrary. This confusion has resulted in significant trial delays whenever defence counsel make further requests for disclosure. Moreover, these requests have resulted in many cases being thrown out as this information is not always available. The Bill would have clarified that maintenance records are not relevant to this inquiry and would have set out a framework for further disclosure applications by the defence in impaired driving cases.

Drug Recognition and Evaluation

Bill C-73 would have strengthened the Drug Recognition and Evaluation (DRE) provisions by clarifying that the evidence of an evaluating officer conducting the DRE is admissible in evidence without qualifying the evaluating officer as an expert. Further, it proposed a rebuttable presumption whereby if an evaluating officer identifies a class of drug as being in the system of a person, based on his or her evaluation, and that class of drug is confirmed by testing the bodily sample in a lab, it is presumed that that same drug was also present in the person's body at the time when they were driving and the same drug caused the signs of impairment observed by the peace officer at the roadside. Finally, the Bill authorized taking a blood sample when a person is reasonably believed to be impaired by a drug to facilitate the investigation and prosecution of drug-impaired driving.

Stakeholder considerations

As many of the proposals in Bill C-73 were the result of significant consultations with the PTs, they were supportive of most of the Bill. PT officials are confident that the elements of former Bill C-73 will increase efficiency of trials and act as a deterrent for those who may be at risk of driving while impaired. However, they expressed concern with respect to the six-year MMP for

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[REDACTED] and Mothers Against Drunk Driving (MADD) Canada oppose any MMP for this offence believing that it is constitutionally suspect and that the courts have made significant progress in imposing appropriate sentences. MADD Canada indicated that Bill C-73 did not go far enough as it did not contain legal limits for drug-impaired driving (drug-impaired driving is the subject of briefing note 2015-012752 submitted to your office February 15, 2016) nor did it contain random breath testing (RBT). RBT permits police officers to require a person to comply with a road-side screening demand without suspicion that they have alcohol in their body.

RBT was unanimously recommended by the Standing Committee, which noted that RBT increases the perceived risk of detection and would likely result in significant deterrence. [REDACTED]

[REDACTED] When the Department consulted on the issue of RBT following the release of the Standing Committee Report, it was strongly supported by law enforcement, traffic safety organizations including MADD, and medical organizations. It was opposed by the defence bar and civil liberty organizations. In jurisdictions where RBT has been implemented, there were substantial reductions in deaths caused by impaired drivers, including a 23 percent reduction in Ireland in the first year and a 36 percent reduction in New South Wales, Australia in the first four years of RBT.

CONCLUSION

Bill C-73, the *Dangerous and Impaired Driving Act*, was the result of significant PT and public consultation and many elements are consistent with your mandate to "undertake modernization efforts to improve the efficiency and effectiveness of the criminal justice system, in cooperation with provinces and territories."

ANNEXES

- Annex 1: Ending Alcohol-Impaired Driving: A Common Approach
Annex 2: [REDACTED]
Annex 3: [REDACTED]

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HOUSE OF COMMONS
CANADA

ENDING ALCOHOL-IMPAIRED DRIVING: A COMMON APPROACH

**Report of the Standing Committee on
Justice and Human Rights**

**Ed Fast, MP
Chair**

JUNE 2009

40th PARLIAMENT, 2nd SESSION

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40th PARLIAMENT, 2nd SESSION

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THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

has the honour to present its

TENTH REPORT

Pursuant to its mandate under Standing Order 108(2), the Committee has undertaken a comprehensive review of matters related to impaired driving and has agreed to report to the House as follows:

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ENDING ALCOHOL-IMPAIRED DRIVING: A COMMON APPROACH

INTRODUCTION

In exercising its jurisdiction over criminal law, Parliament has enacted measures in the *Criminal Code* to prohibit and punish impaired driving. The *Criminal Code* also sets out the procedures to be followed to obtain the evidence necessary for prosecution of these offences. In addition to the measures taken by the federal government, the provinces and territories use their authority to regulate driver licensing and highways to impose provincial licence suspensions. Some provinces impound the vehicles of repeat impaired drivers and they impound cars being driven by persons who are prohibited from driving pursuant to the *Criminal Code* or have had their licence suspended by the province. The provinces are also responsible for prosecuting and implementing many provisions of the *Criminal Code*, as part of their jurisdiction over the administration of justice.

The *Criminal Code* prohibits driving while one's ability to operate a vehicle is impaired by alcohol or drugs. It is also an offence to drive with a Blood Alcohol Concentration (BAC) in excess of 80 mg of alcohol in 100 ml of blood. There are mandatory minimum penalties upon conviction for these offences with escalating penalties for repeat offenders. Furthermore, impaired driving causing bodily harm or death carries a significantly greater penalty. The *Criminal Code* enables police to demand a breath or blood sample where they have reasonable grounds to believe that a driver is impaired. Failure or refusal to provide a sample is an offence carrying the same penalty as driving with a BAC over the legal limit.

The provinces and territories have instituted administrative penalties or controls that allow immediate action to be taken against suspected impaired drivers. One example of such measures is an automatic licence suspension that takes effect following failure or refusal of a breath test. This suspension is not dependent on there being a *Criminal Code* conviction. All jurisdictions except Québec have also implemented temporary preventive suspensions for drivers with a BAC that is considered elevated but still below the criminal limit set out in the *Criminal Code*. All provinces have adopted zero BAC limits for young or novice drivers as part of graduated driver licensing schemes.

Thus, Canada has in place a three tier system of sanctions, depending upon the level of BAC:

- 0.00 BAC level for young and novice drivers;
- 0.05 BAC, where administrative sanctions apply, such as licence suspensions (0.04 BAC in Saskatchewan); and
- 0.08 BAC, above which level *Criminal Code* sanctions apply.

Another enforcement tool is the seizure and impoundment of vehicles operated by a prohibited or unlicensed driver. In general, therefore, provincial and territorial legislation seems to aim toward a more swift and certain administrative action as a means of reinforcing the criminal penalties available under the *Criminal Code*, which take time to proceed with and which may or may not be implemented even where charges are laid.

On July 2, 2008, new provisions of the *Criminal Code* concerning impaired driving came into force. As a result, there are now nine distinct offences related to impaired driving in the *Criminal Code*. These offences are:

Method of Proceeding	Indictable Offence		Summary Conviction	
Offence	Minimum	Maximum	Minimum	Maximum
Operating a motor vehicle while the ability to do so is impaired by alcohol or a drug ¹	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	5 years' imprisonment	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	18 months' imprisonment
Operating a motor vehicle having consumed alcohol in such a quantity that the concentration of alcohol in the blood exceeds 80 milligrams per 100 millilitres of blood ²	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	5 years' imprisonment	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	18 months' imprisonment

1 ss. 253(1)(a)

2 ss. 253(1)(b)

Method of Proceeding	Indictable Offence		Summary Conviction	
	Minimum	Maximum	Minimum	Maximum
Failing to comply with a demand for a sample ³	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	5 years' imprisonment	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	18 months' imprisonment
Driving while impaired by alcohol or a drug causing bodily harm ⁴	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	10 years' imprisonment		
Operating a motor vehicle having consumed alcohol in such a quantity that the concentration of alcohol in the blood exceeds 80 milligrams per 100 millilitres of blood causing bodily harm ⁵	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	10 years' imprisonment		

3 s. 254(5)

4 s. 255(2)

5 s. 255(2.1)

Method of Proceeding Offence	Indictable Offence		Summary Conviction	
	Minimum	Maximum	Minimum	Maximum
Failing to comply with a demand for a sample causing bodily harm ⁶	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	10 years' imprisonment		
Operating a motor vehicle while the ability to do so is impaired by alcohol or a drug causing death ⁷	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	Life imprisonment		
Operating a motor vehicle having consumed alcohol in such a quantity that the concentration of alcohol in the blood exceeds 80 milligrams per 100 millilitres of blood causing death ⁸	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	Life imprisonment		

6 s. 255(2.2)

7 s. 255(3)

8 s. 255(3.1)

Method of Proceeding	Indictable Offence		Summary Conviction	
	Minimum	Maximum	Minimum	Maximum
Failing to comply with a demand for a sample causing death ⁹	\$1,000 fine (1 st offence) 30 days' imprisonment (2 nd offence) 120 days' imprisonment (subsequent offence)	Life imprisonment		

PREVALENCE OF IMPAIRED DRIVING

Witnesses who appeared before the Committee made it clear that impaired driving remains the number one criminal cause of death in Canada. The Canadian Police Association indicated that, despite our collective best efforts and intentions, it is apparent that the problem of impaired driving is worsening in Canada and we are losing ground in our efforts to eliminate the problem. Mothers Against Drunk Driving stated that, since 1999, the progress in Canada on impaired driving has stalled.

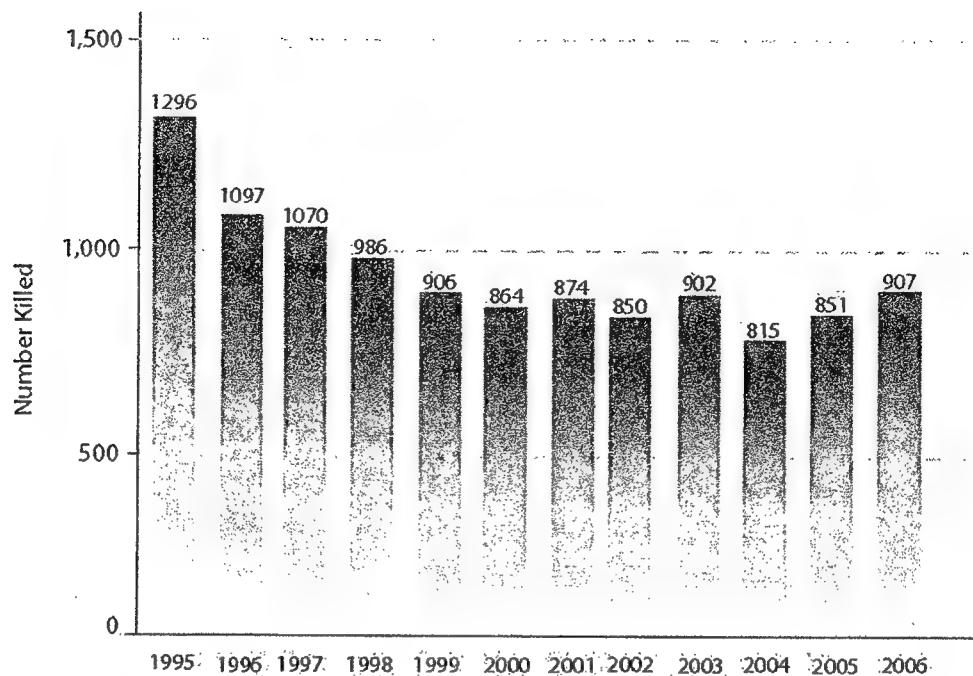
The scale of the problem of impaired driving is reflected in a survey of Canadians which indicated that almost one quarter (22.3%) of them—an estimated 7.5 million—know of a family member or close friend who has been the victim of a drinking and driving collision that they did not cause.¹⁰ An estimated 5.4 million Canadians (16.5%) stated that they know of a family member or friend who was drinking and driving and caused a collision where they were at fault. The impact on the lives of Canadians includes serious physical and psychological injuries and the attendant health care costs, as well as the loss of family members and friends.

In 2006, the most recent year for which data is available, 907 Canadians were killed in a traffic crash involving a drinking driver.¹¹ This represents a decrease from the 1,296 Canadians killed in 1995 but the number has been increasing since 2005. The data indicate that the decrease in the number of fatalities largely took place in the 1990s but the 2005 and 2006 data suggest that any progress that may have been made has since halted.

9 s. 255(3.2)

10 Traffic Injury Research Foundation, *The Road Safety Monitor 2008: Drinking and Driving National*, http://tirf.ca/publications/PDF_publications/rsm2008_dd-nat_web.pdf

11 Ibid.



Source: Traffic Injury Research Foundation, *The Road Safety Monitor 2008: Drinking and Driving National*, http://tirf.ca/publications/PDF_publications/rsm2008_dd-nat_web.pdf

Another suggestion that progress in the fight against drinking and driving has halted is the result of a survey of Canadians on the issue. 18.1% of Canadians admitted to driving after consuming any amount of alcohol in the past 30 days in a survey conducted in 2008. This represents an increase from 15.8% in 2003.¹²

When calculating the financial costs of impaired driving, there are three types of questions that can be asked:

- How much will this cost me in real dollars spent? (Real Dollar Estimate)
- How much will this cost me in terms of lost goods, opportunity or productivity? (Deferred Future Earnings)
- How much would I pay for this not to have happened? (Willingness to Pay)

12 Ibid.

The average cost of impaired driving crashes in Canada from 1999 to 2006 has been calculated using the Real Dollar Estimate as approximately \$1.9 billion per year. This figure is based on money spent, without considering any social costs. The average cost using the Willingness to Pay model is approximately \$11.2 billion per year. This model includes money spent and a broad range of social-related costs.¹³

WHAT THE COMMITTEE HAS DONE

The House of Commons Standing Committee on Justice and Human Rights adopted the following motion on February 9, 2009:

That the Standing Committee on Justice and Human Rights do a full review of the issue of impaired driving including consideration of:

- the advisability of lowering the criminal Blood Alcohol Concentration limits;
- innovative approaches in use in other countries, such as Randomised Breath Testing;
- the implications of advances in technology to enforce the laws; and
- the *Criminal Code* sanctions for impaired driving and how they interrelate with provincial licensing measures.

This motion was a reiteration of a motion first adopted on November 27, 2007 during the 39th Parliament. The dissolution of that Parliament prevented a report from being presented until now.

As part of its study, the Committee heard from witnesses on the following dates: February 7, 2008, February 12, 2008, February 28, 2008, February 23, 2009, February 25, 2009, and March 2, 2009. The witnesses who gave evidence were the following:

- Canadian Police Association
- Louise Nadeau, Full Professor; Research Group on the Social Aspects of Health and Prevention (GRASP)
- Traffic Injury Research Foundation

¹³ MADD Canada, *Estimating the Presence of Alcohol and Drug Impairment in Traffic Crashes and their Costs to Canadians: 1999 to 2006*, February, 2009, http://www.madd.ca/english/research/estimating_presence.pdf

- Mothers Against Drunk Driving (MADD)
- Canada Safety Council (CSC)
- Centre for Addiction and Mental Health
- Canadian Automobile Association (CAA)
- Thomas Brown, Researcher, Addiction Research Program, Douglas Institute, McGill University
- Canadian Centre on Substance Abuse
- Canadian Council of Motor Transport Administrators (CCMTA)
- Canadian Society of Forensic Science
- Frank Hoskins, Crown Attorney
- Department of Justice, Criminal Law Policy Section
- Canadian Council of Criminal Defence Lawyers
- Association of Canadian Distillers
- Insurance Bureau of Canada
- Criminal Lawyers' Association
- Alcohol Countermeasure Systems Corp.
- Centre of Forensic Sciences, Toxicology Section

BLOOD ALCOHOL CONCENTRATION LEVELS

In 1969, an amendment to the *Criminal Code* made it a criminal offence to drive with a Blood Alcohol Content (BAC) of over 80 milligrams of alcohol per 100 millilitres of blood (0.08). That amendment also authorised the police to demand breath samples from suspected impaired drivers and made it an offence for suspects to refuse. In addition, all Canadian provinces (with the exception of Québec) maintain and enforce roadside

administrative sanctions that immediately take drivers who have been drinking off the road where their BAC is above a certain level (usually 0.05) but below the *Criminal Code* level of 0.08.

The suggestion has been made that the criminal BAC be lowered from 0.08 to 0.05.¹⁴ There was testimony before the Committee to the effect that above the 0.05 level safe driving skills are impaired and collision risks are increased.¹⁵ A lower criminal BAC level may not only reduce alcohol-related crashes and deaths, it may also positively change public attitudes about drinking and driving and make drivers more conscious of their drinking. Before we consider amending the law to reduce the criminal BAC from 0.08 to 0.05, however, we need to be certain that we are using the provincial and territorial administrative frameworks (which generally have a 0.05 BAC level) effectively and efficiently.

While the Committee is eager to see fewer deaths and injuries on the road as a result of impaired driving, it is concerned about the lack of consensus among experts in the field as to whether or not a lower *Criminal Code* BAC limit would achieve greater safety. It is also cognizant of the finite resources available to enforce the laws on impaired driving. In addition, as noted below, there are possible negative effects of lowering the BAC limit in the *Criminal Code*.

The Committee does recognise that impairment of driving ability can occur at BACs below 0.08. A study of alcohol use among fatally injured drivers, however, indicates that the bulk of the impaired driving problem lies with those drivers having a BAC over the current *Criminal Code* BAC limit of 0.08. Among the tested drivers in Canada, 62.9% showed no evidence of alcohol — 37.1% had been drinking, 4.3% had BACs below 0.05, 2.6% had BACs from 0.05 to 0.08, 9.4% had BACs from 0.081 to 0.160 and 20.8% had BACs over 0.160. In other words, 81.5% of fatally injured drinking drivers had BACs over the current limit of 0.08.¹⁶ High-BAC drivers (i.e. those with BACs over 160 mg/100 ml of blood) represent a disproportionate number of fatally injured drinking drivers.

High-BAC drivers represent about one percent of the cars on the road at night and on weekends yet they account for nearly half of all drivers killed at those times.¹⁷ Limited resources would seem to be best deployed to target the 81.5% of the fatally injured drinking drivers that are already above the 0.08 threshold. The worst offenders are already

14 Letter from the Canadian Medical Association, March 4, 2009

15 Centre for Addiction and Mental Health, *Reducing Alcohol-related Deaths on Canada's Roads*, Presentation to the Standing Committee on Justice and Human Rights, February 12, 2008

16 Traffic Injury Research Foundation, *Alcohol-Crash Problem in Canada: 2006*, January 2009

17 Canada Safety Council Presentation to the Standing Committee on Justice and Human Rights: Comprehensive Review of Matters Related to Impaired Driving, February 12, 2008

driving with BACs two or three times the current limit and it would be naive to think they would comply with a lower limit. Drivers with the highest BACs constitute the most significant danger on the roads and they are still the priority.¹⁸

Beyond the scientific evidence, a lowering of the *Criminal Code* BAC level would be difficult to implement at a practical level for a number of reasons. One negative effect of lowering the BAC limit in the *Criminal Code* would be to significantly increase the number of criminal prosecutions in Canada, putting additional stress on an already-burdened police and legal system. The justice system is already struggling to deal effectively with the current volume of criminal impaired driving cases.

Caseloads for Crown attorneys are already substantial and impaired driving cases require a great deal of time to prepare and try due to the complexity of the issues. More than 40% of accused persons plead not guilty and proceed to trial. Plea agreements are less common than in other areas of criminal law for a number of reasons. One is that the conviction rate at trial is rather low (approximately 52% nationwide compared to overall conviction rates two decades ago in excess of 90%).¹⁹ A second reason is that the consequences of a conviction are severe, ranging from having a criminal record to mandatory, lengthy driving prohibitions. A third reason is that automobile insurance, which is usually mandatory, may become more expensive if there is a criminal conviction on one's record. The high number of prosecutions that proceed to trial means that the specific deterrent effect of impaired driving laws is eroded as accused persons are able to continue to drive for substantial periods following arrest and prior to conviction. In other words, there may be no swift and certain punishment when criminal charges are laid.

It is estimated that by lowering the legal BAC an additional 75,000-100,000 impaired driving cases would be added to the current caseload of more than 50,000 criminal cases annually.²⁰ The number of criminal impaired driving cases, therefore, could increase by 100%, requiring immense resources to manage. This would essentially overwhelm the justice system and seriously impair the ability of the Crown and the courts to deal effectively with these cases. This would erode the specific and general deterrent effects of impaired driving laws by further reducing the swiftness with which high-BAC cases are processed as well as the certainty of sanctions being applied. It also raises a question regarding what would happen to all of the provincial programs that are now in place.

A further problem with lowering the *Criminal Code* BAC is that, along with fewer resources being applied to each case, it would take longer to resolve these cases. Aside from reducing the speed of the criminal justice system, there would be no guarantees that the end result would be satisfactory. As a function of coping with the influx of new cases,

18. Louise Nadeau, Brief to the Standing Committee on Justice and Human Rights, February 7, 2008

19. Traffic Injury Research Foundation, *Recommendations for Improving Federal Impaired Driving Laws*, Submission to the House of Commons Standing Committee on Justice and Human Rights, March 2009

20. Ibid.

Crown attorneys may be forced to accept plea agreements that are not appropriate, to plead cases that should proceed to trial, and to lose cases that do go to trial due to a lack of preparation time and other resources. This helps to explain why less than half (40%) of Crown prosecutors support lowering the legal BAC limit.²¹

Based on the evidence presented to it, it appears to the Committee that the potentially negative consequences associated with "net widening" and bringing more impaired drivers into criminal court would likely outweigh any potential traffic safety benefit that may result from a lower *Criminal Code* BAC limit. A risk in reducing the criminal limit to a point where it cannot be enforced in a practical way is that this would damage the specific and general deterrent effects of impaired driving laws and reduce the public's respect for them. It should also be kept in mind that all provinces except Québec already apply sanctions when a BAC is found to be between 0.05 and 0.08. These provincial measures can be applied such that drivers who have been drinking are removed from the road immediately. This is in contrast to the 2 to 3 hours required to process a criminal impaired driving arrest, along with the many months before any criminal sanction is imposed.

The potential lowering of the BAC level in the *Criminal Code* was examined by this Committee in its 1999 report entitled *Toward Eliminating Impaired Driving*.²² At that time, the Committee rejected proposals to lower the *Criminal Code* BAC limit to 0.05. The Committee concluded that a legal BAC of 50 mg/100 ml of blood could result in a loss of public support, since scientific evidence suggested that not everyone would be impaired at that level. In addition, the Committee found that a legal level of 0.05 would be difficult for police to enforce, given the lack of overt signs of intoxication at BAC levels below 80 mg/100 ml of blood. The Committee was also cognizant of the fact that the provinces would bear the additional enforcement burdens, as well as the practical consequences, that would flow from such a policy shift. This Committee shares these concerns with lowering the *Criminal Code* BAC level. It believes that what is needed is to increase the perception of apprehension, and to improve the system's efficiency and effectiveness in dealing with impaired offenders.

Short-term suspensions are not necessarily a severe sanction, but they are applied swiftly and with certainty at the time of the offence — factors deemed essential to effective deterrence. They also eliminate the potential danger of having a drinking driver on the road. Criminal sanctions may be more severe but they are often so far removed from the behaviour as to weaken their impact.

21 Ibid.

22 House of Commons Standing Committee on Justice and Human Rights, *Toward Eliminating Impaired Driving*, Ottawa, May 1999

A more aggressive, co-ordinated effort amongst the provinces to strengthen roadside suspension programs would appear to be a cost-effective way of deterring motorists who may consider driving with some level of impairment, allowing the courts to focus time and effort on those cases where much higher levels of impairment were found.

Section 255.1 of the *Criminal Code* states that if an impaired driving offence is committed by someone whose BAC exceeded 0.16 at the time the offence was committed, this will be an aggravating factor on sentencing. This reflects the fact that driving with a high level of impairment (over 0.16 BAC or double the current legal limit) is generally indicative of serious problems. Even if a driver with this level of impairment is being detected for the first time, it is likely that this is a hard-core impaired driver. This is due to the fact that it is rarely the first time they have driven while impaired by alcohol — it is simply the first time they have been arrested for it.²³

The Committee thinks that we can go further in targeting drivers with high BACs by introducing specific penalties for such drivers. The goal of such tiered penalties would be to prevent these drivers from re-offending, since high risk offenders cause a greater number of collisions with higher fatality rates and are more likely to be repeat offenders.²⁴

The Committee also heard testimony about the possibility of introducing a third offence in the *Criminal Code*, namely that of a breath (not blood) alcohol concentration that exceeds 80 milligrams of alcohol in 210 litres of breath. The breath alcohol concentration in the recommendation is the exact equivalent of 80 milligrams of alcohol in 100 millilitres of blood. This is what breath-testing instruments actually calculate and this is then transcribed into a blood alcohol concentration. While this would eliminate many of the defences around variability in what is called the blood-breath ratio, which is that an individual's blood alcohol concentration was greater than 80 mg/100 ml of blood but due to physiological properties they might actually have been below the legal limit, the Committee is not in favour of creating a new offence for two reasons. One is that the *Criminal Code* provisions concerning impaired driving are already complex and do not need the added weight of a new offence. Secondly, the new generation of breath-testing equipment, such as the Intoxilyzer, will hopefully eliminate technical disputes as to whether the breath sample taken provides an accurate measure of the amount of alcohol in the blood.

Recommendation 1:

The Committee recommends that the Blood Alcohol Concentration level in the *Criminal Code* of eighty milligrams of alcohol in one hundred millilitres of blood be maintained.

23 Table québécoise de la sécurité routière, *Improving Road Safety: Initial Report of Recommendations*, June 2007

24 Canadian Automobile Association, *Statement of Policy 2007-2008*, Recommendation 6.3.6

Recommendation 2:

The Committee recommends that the provinces and territories be encouraged to enhance their efforts in intervening at BACs lower than the *Criminal Code* level.

Recommendation 3:

The Committee recommends that tougher sanctions be introduced for repeat impaired drivers.

Recommendation 4:

The Committee recommends that tougher sanctions be introduced for those drivers with a Blood Alcohol Concentration in excess of 160 milligrams of alcohol in 100 millilitres of blood.

RANDOM BREATH TESTING

In Canada, under provincial and territorial legislation, police are allowed to stop a vehicle to check the vehicle's condition, the driver's licence, and condition of the driver, including his or her sobriety. However, police may not request a breath sample using an approved screening device unless the officer reasonably suspects that the driver has alcohol in his or her body. This, however, is not always practical and there are no reliable means of detecting alcohol consumption by observation alone. The detection of alcohol can be a difficult task, especially in a brief interaction at the side of the road. If an impaired driver escapes detection at a checkpoint, it can serve to reinforce drinking and driving behaviour and increase the likelihood of its recurrence.

Random breath testing (RBT) would allow police officers to request a breath sample at any time in the absence of reasonable suspicion or reasonable and probable grounds. This would serve to recognise that driving on Canadian roads is a privilege and not a right. RBT would, therefore, introduce a significant deterrence for people who might otherwise choose to take the chance and drive while impaired.

A number of arguments in support of RBT were made by witnesses who testified before the Committee. One argument was that, although the threshold for suspicion is not high, there is research indicating that many impaired drivers are able to avoid a demand for a breath test when stopped by the police because the officer does not detect the smell of alcohol or symptoms of impairment. Those drivers who do not show signs of impairment and thereby avoid a demand for a breath test would be more likely to be detected by RBT. In other words, the current methods of enforcing the law lead police officers to apprehend only a small percentage of impaired drivers, even at roadside traffic stops designed to detect impaired driving. This also does not speak well for the deterrence effect of Canada's impaired driving laws.

Secondly, it should be kept in mind that only a small fraction of drinking drivers (estimated at between 1/500 and 1/2000) is apprehended.²⁵ The goal of RBT is to increase the probability of an impaired driver coming into contact with the police and, therefore, increase the risk of being caught. Because everyone is required to provide a breath sample under RBT, the perceived risk of detection is much higher than the present situation where the police have to form a suspicion of alcohol in the body. With a higher percentage of impaired drivers being detected, more individuals may be deterred from driving while impaired as the effectiveness of deterrence depends on the perception of the risk of being stopped. With fewer people driving while impaired, fewer people would be injured or killed in impaired driving accidents.

Another argument in favour of RBT is the experience of other countries. RBT came into force in Ireland in July 2006 and was credited by the Road Safety Authority with reducing the number of people killed on Irish roads by 23%.²⁶ A number of Australian states have adopted RBT and various analyses of the programs have shown its worth. One study of the introduction of RBT in New South Wales showed a decrease of 36% in the number of fatally injured drivers with a BAC over the legal limit (0.05) in the first four years of the program. The study also showed a significant decline in the number of people saying they drove while believing they had a dangerous BAC level.²⁷ Publicising RBT programs through the media was found to further enhance the deterrence effect.²⁸

A further argument in support of RBT is that it has the advantage of raising police presence in a region when the program is in place. This police presence has been associated with a corresponding decrease in other criminal behaviour. This is due to the fact that a vehicle is often used in criminal enterprises and so the participants in these activities would wish to avoid police attention.²⁹

In addition to the arguments in support of RBT that were presented to the Committee, it seems that this measure to reduce impaired driving has the support of a majority of Canadians. In a survey commissioned by Transport Canada/MADD Canada, 66% of Canadians agreed that police should be allowed to randomly require all drivers to give a breath test to help detect impaired driving.³⁰

25 Louise Nadeau, Brief to the Standing Committee on Justice and Human Rights, February 7, 2008

26 Department of Justice, *Impaired Driving Issues*, Brief Submitted to the House of Commons Standing Committee on Justice and Human Rights, February 2008

27 MADD Canada, *Reform of the Federal Law Concerning Impaired Driving: The Next Steps*, Submission to the House of Commons Standing Committee on Justice and Human Rights, March 2, 2009

28 Insurance Bureau of Canada, Submission to the House of Commons Standing Committee on Justice and Human Rights, February 27, 2009

29 The Canadian Council of Motor Transport Administrators (CCMTA) Submission to the Standing Committee on Justice and Human Rights Regarding Impaired Driving, February 2008

30 *Impaired Driving Survey for Transport Canada/MADD Canada*, prepared by Ekos Research Associates Inc., December 2007, <http://www.madd.ca/english/news/pr/TP%2014760%20V2%20E.pdf>

One caveat that must be raised when it comes to the proposed adoption of RBT is the possibility of it being challenged under section 8 of the *Canadian Charter of Rights and Freedoms*, which states that everyone has the right to be secure against unreasonable search or seizure and under section 9, which states that everyone has the right not to be arbitrarily detained or imprisoned. By its very name, random breath testing indicates that it is not based on the reasonable suspicion that a driver has consumed alcohol but is carried out purely at random. At face value, this would appear to be an "unreasonable" search and an "arbitrary" detention, contrary to the Charter.

Thus, a random breath test may have to be justified under section 1 of the Charter, which guarantees that the rights set out in the Charter are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. The case of *R. v. Oakes*³¹ set out the tests that should be applied during a section 1 analysis. First, the objective of the law in question must be one related to concerns which are pressing and substantial in a free and democratic society. Secondly, it must be shown that the means chosen are reasonable and demonstrably justified. This second part is described as a proportionality test, which requires the party supporting the law to show three things:

- The measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective.
- The means, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question.
- There must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance". The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society.

The Committee is aware that there can be no guarantees when it comes to Charter litigation. Such matters often involve a difficult and complex balancing of rights and interests. In the case of RBT, the Committee has been persuaded that the first part of the section 1 test may be satisfied by the abundant evidence showing that impaired driving is a significant health, social and economic problem and that, as outlined previously, progress in reducing the damage caused by impaired driving has stalled. The Supreme Court of

31 [1986] 1 S.C.R. 103

Canada has recognised the role of the criminal law in fulfilling this part of the section 1 test, stating "There is no question that reducing the carnage caused by impaired driving continues to be a compelling and worthwhile government objective."³²

As for the second part of the test, the evaluations of RBT used in foreign jurisdictions have shown that there is a rational connection between a law to introduce such a program and the objective of reducing alcohol-related road collisions. Rights are impaired as little as possible since the stop and request for breath is brief and non-invasive (unlike, for example, the taking of a blood sample). Finally, in terms of proportionality between the objective and the limitations, the goal of reducing the many types of damage related to impaired drivers is significant and the effort required by drivers to contribute to a solution is minimal.

An additional argument that can be made in the section 1 debate is that drivers on Canadian roads are already subject to random stops and searches under provincial highway traffic laws. This type of random stop has already been examined and approved by the Supreme Court of Canada as a reasonable limit prescribed by law.³³ Given that these searches are meant to determine whether a vehicle is safe to drive, it would not appear to the Committee to be that much more of an extension of the law to allow police to determine if the driver is safe to drive as well.

Recommendation 5:

The Committee recommends that random roadside breath testing be put in place.

ADVANCES IN TECHNOLOGY

Alcohol Ignition Interlock Devices

One of the advances in technology that can help to reduce the incidence of impaired driving is the alcohol ignition interlock device. When this device is installed in a motor vehicle, a driver must provide a breath sample before it will start. If the breath sample shows that the driver has a BAC in excess of a pre-set limit, the ignition will lock and the vehicle cannot be started. The available evidence clearly shows that impaired driving and recidivism are significantly reduced while these devices are installed on an offender's vehicle.³⁴

32 *R. v. Orbanski ; R. v. Elias*, [2005] 2 S.C.R. 3, para. 55

33 *R. v. Ladouceur*, [1990] 1 S.C.R. 1257

34 Centre for Addiction and Mental Health, *Reducing Alcohol-Related Deaths on Canada's Roads*, Presentation to the Standing Committee on Justice and Human Rights, February 12, 2008

Currently, a court may authorise the offender to operate a motor vehicle equipped with an alcohol ignition interlock device during the driving prohibition period if the offender registers in an alcohol ignition interlock device program established by a province or territory. All provinces have established such a program. Section 259 of the *Criminal Code* imposes mandatory driving prohibitions of one year for a first offence, two years for a second offence, and three years for each subsequent offence. In making such an order, however, a court may authorise the offender to operate a motor vehicle equipped with an alcohol ignition interlock device during the prohibition period. Even if such a device is installed, subsection 259(1.2) still requires that there be no reduction in the driving prohibition period below three months (for a first offence), six months (for a second offence) and 12 months (for each subsequent offence). In other words, an alcohol ignition interlock will reduce the length of the driving prohibition period, but not eliminate it altogether.

The evidence presented to the Committee demonstrated the beneficial effects of using alcohol ignition interlocks. Research has shown that the device, which is installed at the offender's expense, can reduce recidivism by 50 to 90%.³⁵ This sanction is more easily enforced than traditional sanctions, such as licence suspensions, while still permitting offenders to remain employed and fulfil family responsibilities. An interlock serves as a constant reminder of the problem behaviour that needs correction because they are both an inconvenience to offenders as well as a cost. Increased use of alcohol ignition interlock devices could enhance public protection while offering meaningful deterrence to individual offenders.

One problem with alcohol ignition interlocks is that there is no national standard for these devices. The Alcohol Test Committee of the Canadian Society of Forensic Science is responsible for approving Approved Screening Devices and Approved Instruments but not ignition interlocks, as those programs are within provincial/territorial jurisdiction. In order to improve national consistency and elevate the technical standard for these devices, it would be beneficial if the Alcohol Test Committee could be given responsibility for approving specific ignition interlock devices as meeting an approved standard, as is the case with Approved Screening Devices and Approved Instruments.

Recommendation 6:

The Committee recommends that the use of alcohol ignition interlock devices be encouraged.

35 Traffic Injury Research Foundation, *Ignition Interlocks: From Research to Practice: A Primer for Judges*, July 2006

Recommendation 7:

The Committee recommends that the Alcohol Test Committee of the Canadian Society of Forensic Science be authorised to approve alcohol ignition interlock systems for use in provincial and territorial programs.

PROVINCIAL/TERRITORIAL MEASURES

As stated earlier in this report, impaired driving is dealt with at both the federal and provincial/territorial levels in Canada, by means of criminal and administrative sanctions, respectively. Section 253 of the *Criminal Code* sets out the federal, criminal law approach to the issue by making it an offence to drive when the concentration of alcohol in the driver's blood exceeds 80 milligrams of alcohol in 100 millilitres of blood. In addition to any other punishment, section 259 of the Code obliges a court to impose a driving prohibition order of at least one year's duration. An exception is made where a province has an alcohol ignition interlock device program, in which case the offender may operate a vehicle equipped with the device while registered in the program, if authorised by the court.

To complement the federal criminal provisions, each province and territory has enacted its own BAC limit with accompanying administrative sanctions, in the form of a driver's licence suspension. The following table provides an overview of the administrative sanctions and BAC levels set by the provinces and territories.³⁶

³⁶ It is important to note that this table deals with the administrative sanctions associated with the provincial or territorial limit established for BAC levels. Some provinces also have particular administrative sanctions associated with .08 BAC levels. Some laws also allow for vehicle seizure in certain cases.

Province	BAC Level for Ordinary Drivers	Penalty	Special BAC Level	Legislation
British Columbia	More than .05 BAC with reverse onus. If a peace officer has reasonable grounds to believe that a driver's ability is affected by alcohol, the peace officer can suspend the licence; but if the driver demonstrates a BAC that does not exceed .05, the licence is to be returned.	24 hour suspension	Drivers with conditional licences cannot have any alcohol in their blood.	<i>Motor Vehicle Act</i> , RSBC 1996, c. 318
Alberta	More than .08 BAC with reverse onus. If a peace officer reasonably suspects that a driver's ability is affected by alcohol, the peace officer can suspend the licence, but if the driver demonstrates a BAC that does not exceed .08, the licence is to be returned.	24 hour suspension	Novice drivers cannot have any alcohol in their blood.	<i>Traffic Safety Act</i> , RSA 2000, c. T-6

Saskatchewan	.04 BAC with reverse onus. If a peace officer reasonably suspects that a driver's ability is affected by alcohol, the peace officer can suspend the licence; but if the driver demonstrates a BAC that is less than .04, the licence is to be returned.	24 hour suspension for a first infraction, 15 days and mandatory DWI course for a second infraction, and 90 days and mandatory alcohol dependence evaluation followed by therapeutic measures for all subsequent infractions (as applicable to infractions committed within 5 years).	New drivers cannot have any alcohol in their blood.	<i>Traffic Safety Act, SS 2004, c. T-18.1</i>
Manitoba	.05 BAC	24 hour suspension	Novice drivers cannot have any alcohol in their blood.	<i>Highway Traffic Act, C.C.S.M., c. H60</i>

Ontario	.05 BAC	3 day suspension for a first infraction, 7 days for a second infraction, and 30 days for all subsequent infractions (as applicable to infractions committed within 5 years).	Novice drivers cannot have any alcohol in their blood.	<i>Highway Traffic Act</i> , R.S.O. 1990, c. H.8
Québec	More than .08 BAC	90 day suspension	Learner drivers cannot have any alcohol in their blood.	<i>Highway Safety Code</i> , R.S.Q., c. C-24.2
New Brunswick	.05 BAC	24 hour suspension	Novice drivers cannot have any alcohol in their blood.	<i>Motor Vehicle Act</i> , c. M-17
Nova Scotia	.05 BAC	24 hour suspension	New drivers cannot have any alcohol in their blood.	<i>Motor Vehicle Act</i> , R.S. 1989, c. 293

Prince Edward Island	.05 BAC	24 hour suspension for a first infraction, 30 days for a second infraction, and 90 days for all subsequent infractions (as applicable to infractions committed within 24 months).	New drivers and drivers who are under 19 cannot have any alcohol in their blood.	<i>Highway Traffic Act, R.S.P.E.I. 1988, c. H-5</i>
Newfoundland and Labrador	.05 BAC	24 hour suspension for the first and second infractions, and suspension for up to 6 months for subsequent infractions committed within 24 months.	Novice drivers cannot have any alcohol in their blood.	<i>Highway Traffic Act, RSNL 1990, c. H-3</i>
Yukon	More than .08 BAC	90 day suspension or until the conclusion of the criminal proceedings (the shorter of the two).	Novice and learner drivers cannot have any alcohol in their blood.	<i>Motor Vehicles Act, R.S.Y. 2002, c. 153.</i>

Northwest Territories	More than .05 BAC with reverse onus. If a peace officer reasonably suspects that a driver's ability is affected by alcohol, the peace officer can suspend the licence; but if the driver demonstrates a BAC that does not exceed .05, the licence is to be returned.	24 hour suspension	Novice drivers cannot have any alcohol in their blood.	<i>Motor Vehicles Act</i> , R.S.N.W.T. 1988, c. M-16
Nunavut	More than .06 BAC with reverse onus. If a peace officer reasonably suspects that a driver's ability is affected by alcohol, the peace officer can suspend the licence; but if the driver demonstrates a BAC that does not exceed .06, the licence is to be returned.	4 to 24 hour suspension		<i>Consolidation of Motor Vehicles Act</i> , R.S.N.W.T. 1988, c. M-16

Source: Canada Safety Council, *Canada's Blood Alcohol Laws — an International Perspective*, March 2006, available at: <http://www.safety-council.org/info/traffic/impaired/BAC-update.pdf> (updated by the author).

One issue that arose among Committee members in discussions of provincial and territorial legislation is that of the minimum age for purchasing and consuming alcohol. Minimum purchase age laws are only effective if they are strictly and consistently enforced in all situations. This is not currently the case in Canada, where Alberta, Manitoba, and Québec set their minimum purchase ages at 18, while the rest of Canada sets the age at 19. The Committee has concluded that harmonising minimum purchase ages across jurisdictions would help reduce certain risky drinking behaviours. One example of such a behaviour is where significant numbers of young people cross provincial or territorial

boundaries to take advantage of less restrictive regulations in neighbouring jurisdictions. This problem can be especially acute at certain border points where alcohol outlets and licensed establishments cluster to meet the demand from cross-border customers.

Recommendation 8:

The Committee recommends that the provinces be encouraged to co-ordinate provincial legal drinking ages to reduce the practice of cross-border drinking and driving.

OTHER RELATED RECOMMENDATIONS

Parliament has the ability to provide principles to guide the courts when they are applying the *Criminal Code* provisions related to impaired driving. A statement of principles might start by emphasising that driving is a privilege and not a right. It could go on to say that it is in the interest of the safety of everyone that those who endanger the lives of others by driving impaired must be subject to swift, certain and severe criminal penalties. The continuing problem of impaired driving is a serious one and must be addressed urgently by the courts. In carrying out their functions, the courts must recognise that there is a direct relationship between impaired drivers and collisions and the severity and risk of collisions increases as the concentration of alcohol in the blood increases. The criminal law has an important role to play in communicating a certain message — impaired driving is unacceptable at all times and in all circumstances.

Recommendation 9:

The Committee recommends that Parliament provide guidance to the judiciary through a legislative preamble or statement of principles, which acknowledges the inherent risks of impaired driving and the importance of meaningful and proportionate consequences for those who endanger the lives of others and themselves.

In 1999, the *Criminal Code* was amended to increase from two to three hours the time period within which the police could demand evidentiary breath and blood samples from suspected impaired drivers. Yet the breath and blood analyses are still only presumed to reflect the suspect's BAC at the time of the alleged offence if the samples are taken within two hours. This time constraint can be problematic for a police officer if the arrest occurred in a rural area or when he or she was quite busy with other tasks such as assisting crash victims or securing an accident scene. A presumption of identity up to three hours would relieve the prosecutor of the time-consuming and costly obligation of calling a toxicologist in each impaired driving prosecution where the samples were taken outside of the time limit.

Recommendation 10:

The Committee recommends that the presumption of identity in subsection 258(1)(c)(ii) of the *Criminal Code* be extended from two to three hours.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<u>40th Parliament, 2nd Session</u>		
Association of Canadian Distillers Jan Westcott, President and Chief Executive Officer	2009/02/23	4
Canadian Council of Criminal Defence Lawyers Phil Downes, Representative		
Department of Justice Hal Pruden, Counsel, Criminal Law Policy Section Greg Yost, Counsel, Criminal Law Policy Section		
Canada Safety Council Raynald Marchand, General Manager of Programs Emile Therien, Past President	2009/02/25	5
Canadian Police Association David Griffin, Executive Officer Charles Momy, President		
Criminal Lawyers' Association Joseph Di Luca, Vice-President Jonathan Rosenthal, Counsel		
Insurance Bureau of Canada Dennis Prouse, Director, Federal Government Relations Robert Tremblay, Director, Road Safety and Special Projects		
Alcohol Countermeasure Systems Corp. Ian Marples, General Counsel	2009/03/02	6
Canadian Automobile Association Eric Lamoureux, Manager of Government Relations, Public Affairs, National		
Government of Ontario Yvona Buczek, Assistant Section Head, Toxicology, Centre of Forensic Sciences, Toxicology Section, Ministry of Community Safety and Correctional Services		

Organizations and Individuals	Date	Meeting
Government of Ontario Marc Pelletier, Forensic Toxicologist, Centre of Forensic Sciences, Toxicology Section, Ministry of Community Safety and Correctional Services Mothers Against Drunk Driving (MADD) Margaret Miller, National President Andrew Murie, Chief Executive Officer Robert Solomon, Legal Director Traffic Injury Research Foundation Robyn Robertson, President and Chief Executive Officer	2009/03/02	6
<u>39th Parliament, 2nd Session</u>		
Canadian Police Association Tony Cannavino, President David Griffin, Executive Officer Research Group on the Social Aspects of Health and Prevention (GRASP) Louise Nadeau, Full Professor, University of Montreal Traffic Injury Research Foundation Robyn Robertson, President and Chief Executive Officer	2008/02/07	12
Canada Safety Council Raynald Marchand, General Manager of Programs Emile Therien, Past President Canadian Automobile Association Chris White, Vice-President, Public Affairs Centre for Addiction and Mental Health Robert Mann, Senior Scientist, University of Toronto Mothers Against Drunk Driving (MADD) Margaret Miller, National President Andrew Murie, Chief Executive Officer	2008/02/12	13
Canadian Centre on Substance Abuse Douglas Beirness, Manager, Research and Policy	2008/02/28	15

Organizations and Individuals	Date	Meeting
Canadian Council of Motor Transport Administrators Paul Boase, Co-Chair, Strategy to Reduce Impaired Driving Kwei Quaye, Chair, Strategy to Reduce Impaired Driving	2008/02/28	15
Canadian Society of Forensic Science Robert M. Langille, Chair, Alcohol Test Committee		
Department of Justice Hal Pruden, Counsel, Criminal Law Policy Section Greg Yost, Counsel, Criminal Law Policy Section		
As Individuals Thomas G. Brown, Researcher, Addiction Research Program, Douglas Institute, McGill University Frank Hoskins, Q.C.		

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

40th Parliament, 2nd Session

Association of Canadian Distillers

Canada Safety Council

Canadian Automobile Association

Canadian Medical Association

Canadian Police Association

Canadian Vintners Association

Department of Justice

Insurance Bureau of Canada

Mothers Against Drunk Driving (MADD)

Traffic Injury Research Foundation

39th Parliament, 2nd Session

Brewers Association of Canada

Canada Safety Council

Canadian Association of Chiefs of Police

Canadian Automobile Association

Canadian Council of Motor Transport Administrators

Department of Justice

Mothers Against Drunk Driving (MADD)

Research Group on the Social Aspects of Health and Prevention (GRASP)

Traffic Injury Research Foundation

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the Government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (*40th Parliament, 2nd Session: Meetings Nos. 4, 5, 6, 7, 10 and 30 and 39th Parliament, 2nd Session: Meetings Nos. 12, 13, 15 and 18*) is tabled.

Respectfully submitted,

Ed Fast, MP

Chair



Standing Committee on Justice and Human Rights

Supplementary Opinion Concerning Impaired Driving

Issued 11 June 2009 on Behalf of Mr. Comartin, M.P. (Windsor-Tecumseh) NDP Justice Critic

INTRODUCTION

The Standing Committee on Justice and Human Rights, in accordance with its mandate to oversee all matters of criminal justice which appear before the House of Commons, has been engaged since February 2008 in an intensive study of issues related to the criminal, social, and human impact of impaired driving in Canada.

Between 7 February 2009 and 2 March 2009, the Justice Committee consulted a broad series of witnesses spanning law enforcement, the Federal Public Service, academia, industry, and victims' advocacy organizations. This diverse series of testimonials brought real insight to the Committee's proceedings, and presented Members and the public with a largely balanced, objective view of the historical and contemporary parameters of impaired driving in Canada.

A strong multi-partisan consensus that impaired driving remains a major concern was discernible throughout the Committee's work. All Members expressed their conviction that strong legislative and regulatory measures were required to address the persistent scourge of impaired driving, whose grim reality was evidenced by the intimate and often heart-wrenching personal tragedies described so compellingly by several witnesses.

The tone of the Committee's work was with few exceptions admirably collegial, and Members from all parties overwhelmingly treated the proceedings with the professionalism they merit.

The majority report ultimately produced by the Committee's investigation contains a number of important recommendations which rightly enjoy the support of all parties, and strike a balance between the competing priorities called for by stakeholders. This minority report is issued in order to address those few shortcomings which might be rectified to ensure that the Committee's final recommendations on this critical public policy issue serve Canadians in the best way possible.

THE CONTEMPORARY CONTEXT OF IMPAIRED DRIVING IN CANADA

The late 1990s witnessed a considerable decline in the prevalence of impaired driving in Canada, and a concurrent drop in the number of associated charges, convictions, and fatalities.¹ While determining the precise cause of this decline is to some extent a politically subjective exercise, it is generally agreed that toughened enforcement by Provincial and Territorial authorities coupled with limited, periodic intensification of *Criminal Code* sanctions over this period represent major contributing factors. In addition the national public education campaign against impaired driving led by groups such as MADD and our police services contributes positively to a change of driving habits while under the influence of alcohol.

Significant evidence exists, however, suggesting authorities at both levels of Government have more recently allowed justifiable pride at this achievement to degenerate into complacency. Excluding a minor decline in 2003/04, fatalities resulting from impaired driving incidents have steadily increased in this decade. It is of note that this resurgence of fatalities has occurred at exactly the time several Provincial/Territorial Governments significantly intensified penalties for impaired driving violations and new *Criminal Code* provisions have created entire new classes of offenses, explicitly targeted recidivist drunk driving, and eliminated technical loopholes whose effect was to unduly insulate offenders from timely conviction.² While definitive statistics are not yet available for 2007 or 2008, it is apparent the increase has continued unabated.

Consultations with numerous organizations representing Canada's law enforcement personnel and the broader legal community reveal that the number one flaw in our national framework for addressing impaired driving has always been and remains material. Under increasing budgetary pressure, Federal and Provincial Governments have too often adopted the counterproductive practice of toughening penalties while underfunding the police, prosecutors, and judges required to translate tough penalties into convictions.

Where a monitoring-intensive area of law enforcement practice like impaired driving is concerned, even the toughest sentencing imaginable will be of little effect if police are too scarce and their coverage too diluted to adequately enforce law, or the Crown and court system are inundated with an unmanageable case load, as is demonstrably the case in several Provincial jurisdictions today.

1 JURISTAT statistics on number of impaired driving-related fatalities in Canada, 1995-2006

2 Majority Report of the Standing Committee on Justice and Human Rights, *June 2009*

THE BENEFITS OF A NATIONAL .05 BLOOD ALCOHOL CONCENTRATION (BAC) STANDARD

Canada's national impaired driving standard is outlined by Section 253 of the *Criminal Code*, which sets 0.08 BAC as the maximum criminal limit of intoxication when operating a motor vehicle. Provinces enjoy wide autonomy in establishing stronger restrictions on impaired driving, but the 0.08 benchmark represents the statutory national standard.

At the Provincial level, impaired driving laws are defined by a loose and ineffective patchwork system. The differing approaches of Provinces are reflected both in terms of different license suspension policies, which range widely from relatively menial 24-hour suspensions for any BAC up to the 0.08 legal limit under Alberta's *Traffic Safety Act* to a comparatively strict 3 day suspension for 0.05 BAC under Ontario's *Highway Traffic Act*, and even more divergent practices where the interplay between Provincial regulations and the *Criminal Code* are concerned.³ In recent years a number of Provinces have taken inconsistent steps towards stricter penalties for repeat offenders, who are statistically more likely to exceed BAC limits by large margins and be involved in dangerous incidents. Certain Provinces and regions, notably Québec and rural Canada, are documented as having drastically lower levels of enforcement and arrest-conviction ratios in impaired driving cases.

While Canada's Constitutional framework is sufficiently unique that direct comparisons with the Federal systems of other nations are problematic. The persistent severity of Canada's impaired driving challenge compels us to send the strong and unequivocal message of national scope, one that cannot be attained by a mere Provincial patchwork response. Only a tightened national standard can compel recalcitrant Provincial authorities to act.

As numerous witnesses suggested, under current *Criminal Code* provisions Canada effectively permits among the highest BAC levels in the world. This problem is particularly acute when one considers the fact that our courts have routinely accorded defendants generous margin-of-error mitigations in assessing impaired driving cases. This means that the technical 0.08 BAC requirement is usually a *de facto* 0.1 limit when it comes to prosecution and conviction.

Countless reputable organizations have shown that jurisdictions around the world which implement a 0.05 BAC benchmark for summary offence consistently enjoy notable reductions in both arrests and fatalities associated with impaired driving. The 0.05 BAC has been successfully implemented in virtually every OECD country, including the most advanced EU economies, without either subjecting the judicial

3 *Ibid.*

system to unmanageable strain or being declared constitutionally invalid. Almost without exception, there has been a direct correlation between the permissiveness of BAC laws and the prevalence of criminal impaired driving incidents.⁴

Medical science in Canada and abroad has definitively determined that 0.05 BAC represents the threshold at which the ability of a human being to operate a motor vehicle, subject to the normal variations based on body mass, gender, dietary, and hydration factors, becomes sufficiently impaired to present an imminent danger to themselves and others.⁵

RESPONDING TO CRITICISMS OF 0.05 BAC

Logistical Pressure on the Judicial System

The Majority opinion argues that changing the *Criminal Code* in order to lower the BAC limit will result in a huge influx of criminal prosecutions, putting additional strain on an already overburdened system.⁶ While the present volume of impaired driving cases may be overwhelming, changes made to the *Criminal Code*, specifically the "Evidence to the Contrary" section will help mitigate this concern.

Currently 40% of defendants charged with impaired driving plead not guilty.⁷ Defendants choose to proceed to trial for various reasons, high among them has been the availability of "Evidence to the Contrary" section in the *Criminal Code*, commonly known as the Two-Beer Defence. Under this defence, the accused had the ability to challenge the presumption of a BAC test with over the limit results by presenting evidence to the contrary, showing that in fact, the accused was not over the limit. Clearly, the more defendants who plead not-guilty and proceed to trial has a direct impact on the utilization of resources and the amount of case- and workload being put into the system. As of July 2008, this defence is no longer available, having been rescinded by way of amendments to the *Criminal Code*.

Although statistics for 2007 and 2008 are currently unavailable, the elimination of the Two-Beer Defence is almost certain to cause a significant drop in the number of non-guilty pleas for impaired driving charges. It follows that resources will be freed up thereby relieving the system of the common congestion seen before the *Criminal Code*

4 Professor Robert Solomon and Professor E. Chamberlain, *Reforming the Federal Impaired Driving Legislation: Next Steps*. Submission to the Standing Committee on 2 March 2009.

5 Letter from Mr. Robert Ouelett, M.D., F.R.C.P.C., President of the Canadian Medical Association, to Mr. Ed Fast, M.P., Chair of the Standing Committee on Justice and Human Rights, 4 March 2009.

6 Majority Report of the Standing Committee on Justice and Human Rights, June 2009

7 Traffic Injury Research Foundation, *Recommendations for Improving Federal Impaired Driving Laws*, Submission to the House of Commons Standing Committee on Justice and Human Rights, March 2009

was amended to eliminate the Two-Beer Defence. As a result, lowering the BAC level will not cause further congestion, in large part due to the elimination of a defence commonly exploited by the impaired driving accused.

Effective Standard

Section 253(1)(b) of the *Criminal Code* clearly states that a person who registers a 0.08 BAC while driving is operating while impaired. While the federal limit is clearly 0.08 BAC, the fact is that prosecutions are not made against impaired drivers when the BAC registers lower than 0.1. Therefore, although the legal limit is 0.08 the reality is that there is an effective limit in place in Canada, .02 points higher than the current legal limit.

The effective limit has come into place through a general belief in human and machine error. That is, there is a margin of error when testing the BAC of a suspected impaired driver, and rather than prosecute a defendant who can show evidence of error, it is more efficient and prudent to prosecute the impaired driver who registered at a 0.1 BAC because the margin of error would still place them within the legally unacceptable BAC limit. The use of this type of effective limit is clearly dangerous, since a severe degradation of skills used in driving occurs at 0.05 BAC, half the amount of the effective limit.

If Canada is to enjoy a transparent and authentic justice system, courts must accurately reflect the *Criminal Code* and current legislation. The utilization of a practice implementing an effective limit does not do this, rather it erodes public trust in the criminal justice system, and empowers those who seek to defy the laws of Canada and operate a motor vehicle while intoxicated.

If Parliament is satisfied that 0.08 BAC limit should remain the law within Canada, the most prudent course of action is to lower the legal limit to 0.05 BAC in order for the effective limit to meet the 0.08 BAC level. Effectively, the legal limit would be lowered, however with the continued utilization of the effective limit based on the margin of error prosecutions would not be made for less than 0.08 or 0.07.

RECOMMENDATIONS

The Committee minority therefore recommends:

Recommendation 1:

Contrary to the primary recommendation of the Majority Report, Canada should amend the *Criminal Code* to adopt a national standard of 0.05 BAC.

Recommendation 2:

The Federal Government should honour all previous commitments to support Provincial administration of justice and law enforcement, and undertake whatever financial or organizational support is necessary to enable the rapid, cost-effective implementation of Recommendation 1.

Pages 50 to / à 64
are withheld pursuant to sections
sont retenues en vertu des articles

14, 21(1)(a), 21(1)(b)

of the Access to Information Act
de la Loi sur l'accès à l'information

**Pages 65 to / à 67
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(a), 21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Government
— of —
Saskatchewan

Minister of Justice
and Attorney General
Legislative Building
Regina, Canada S4S 0B3

MINISTER OF JUSTICE
ATTORNEY GENERAL

2015-07-23 11:44

RECEIVED

N.P.
D16-016876
H11ED5
160013

July 27, 2016

The Honourable Jody Wilson-Raybould
Minister of Justice and Attorney General of Canada
284 Wellington Street
OTTAWA ONT K1A 0H8

Dear Minister Wilson-Raybould:

I am writing to you to discuss a topic I care deeply about, impaired driving in Canada. While there have been many positive changes in both the attitudes and behavior of Canadians, impaired driving continues to be a widespread problem with a tragic human cost.

Saskatchewan holds the unfortunate distinction of having the highest rate of impaired driving in Canada, though this problem is not just present in Saskatchewan. Provinces across all of Canada are all dealing with the aftermath of these senseless acts. As stated in the 2015 IRTAD Road Safety Annual Report, 34% of motor vehicle deaths in Canada are related to alcohol impairment. In comparison to 19 other countries, Canada has the unfortunate reality of having the highest percentage of roadway deaths linked to alcohol impairment.

This is an extremely unfortunate problem that will not improve unless significant action is taken. By working together to address this tragic issue, we can make the roads a safer place for all Canadians.

Yours very truly,

s.19(1)

Gordon S. Wyant, Q.C.

s.21(1)(a)

s.23



Department of Justice
Canada

Ministère de la Justice
Canada

s.21(1)(b)

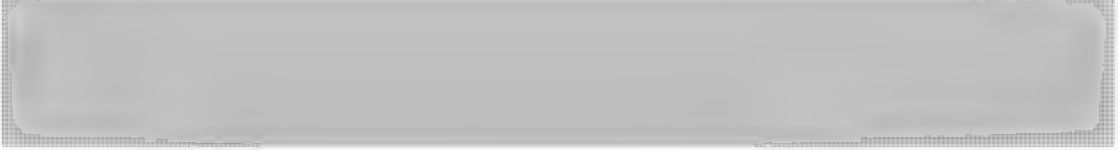


FOR INFORMATION

NUMERO DU DOSSIER/FILE #: 2016-005572

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: Secret

TITRE/TITLE: Options for Impaired Driving Reform (Drugs and Alcohol)

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- 
- C-226 significantly replicates former Bill C-73, largely addressing alcohol driving while making some improvements on the existing drug evaluation provisions. There are three main differences: C-226 proposes random breath testing; a 5-year mandatory minimum penalty (MMP) for impaired driving cases involving death (Bill C-73 proposed six years); and a provision providing for consecutive sentences in cases of impaired driving involving death.
- 
- 

Soumis par (secteur)/Submitted by (Sector):

Policy Sector

Responsable dans l'équipe du SM/Lead in the DM Team:

Scott Nesbitt

Revue dans l'ULM par/Edited in the MLU by:

Sarah McCulloch



Department of Justice
Canada

Ministère de la Justice
Canada

s.21(1)(a)

s.21(1)(b)

s.23

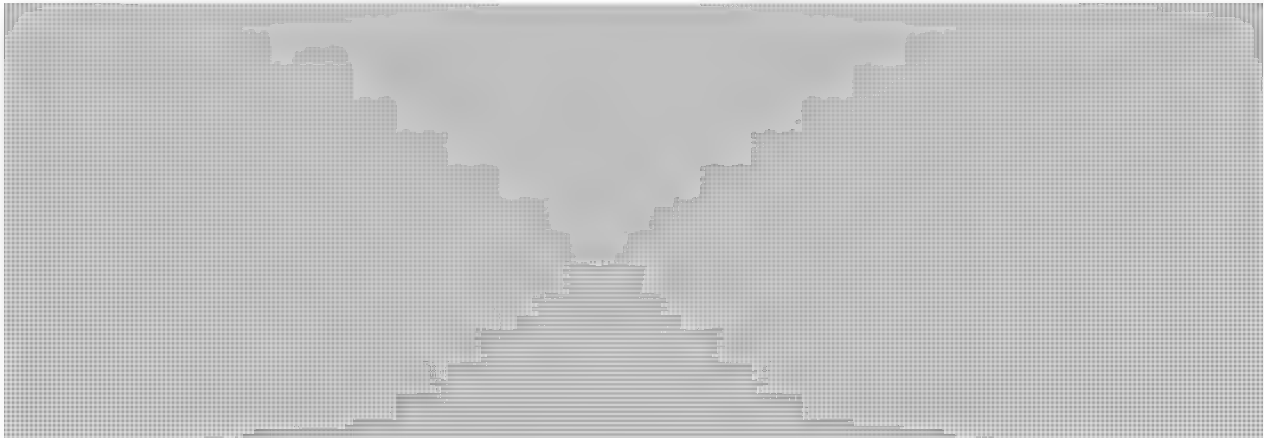
Secret
FOR INFORMATION

2016-005572

MEMORANDUM FOR THE MINISTER

Options for Impaired Driving Reform (Drugs and Alcohol)

ISSUE



BACKGROUND

The *Criminal Code* provisions relating to impaired driving have become overly complex and difficult to apply due in large part to successive piecemeal reforms over many years. They have been subject to such extensive litigation that it is difficult in some cases to understand how they operate simply by reading the provisions. This has impacted the effective and efficient investigation, prosecution, and sentencing of these cases.

On June 16, 2015, the previous government introduced Bill C-73, the *Dangerous and Impaired Driving Act*, which was based upon Parliamentary study in 2009, a public consultation in 2010, and Federal Provincial Territorial consultations. Former Bill C-73, which had not commenced Second Reading debate, died on the Order Paper with the 2015 election call.

Bill C-226 is substantially similar to Bill C-73 with three exceptions: Bill C-226 proposes random breath testing (RBT), which was recommended unanimously by the Standing Committee on Justice and Human Rights in 2009 and is supported by Mothers Against Drunk Driving (MADD); a five-year mandatory minimum penalty (MMP) for impaired driving cases involving death (Bill C-73 proposed six-years); and a provision providing for consecutive sentences in cases of impaired driving involving death.

Page 71

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est retenue en vertu des articles**

14, 21(1)(a), 21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

Page 72

**is withheld pursuant to sections
est retenue en vertu des articles**

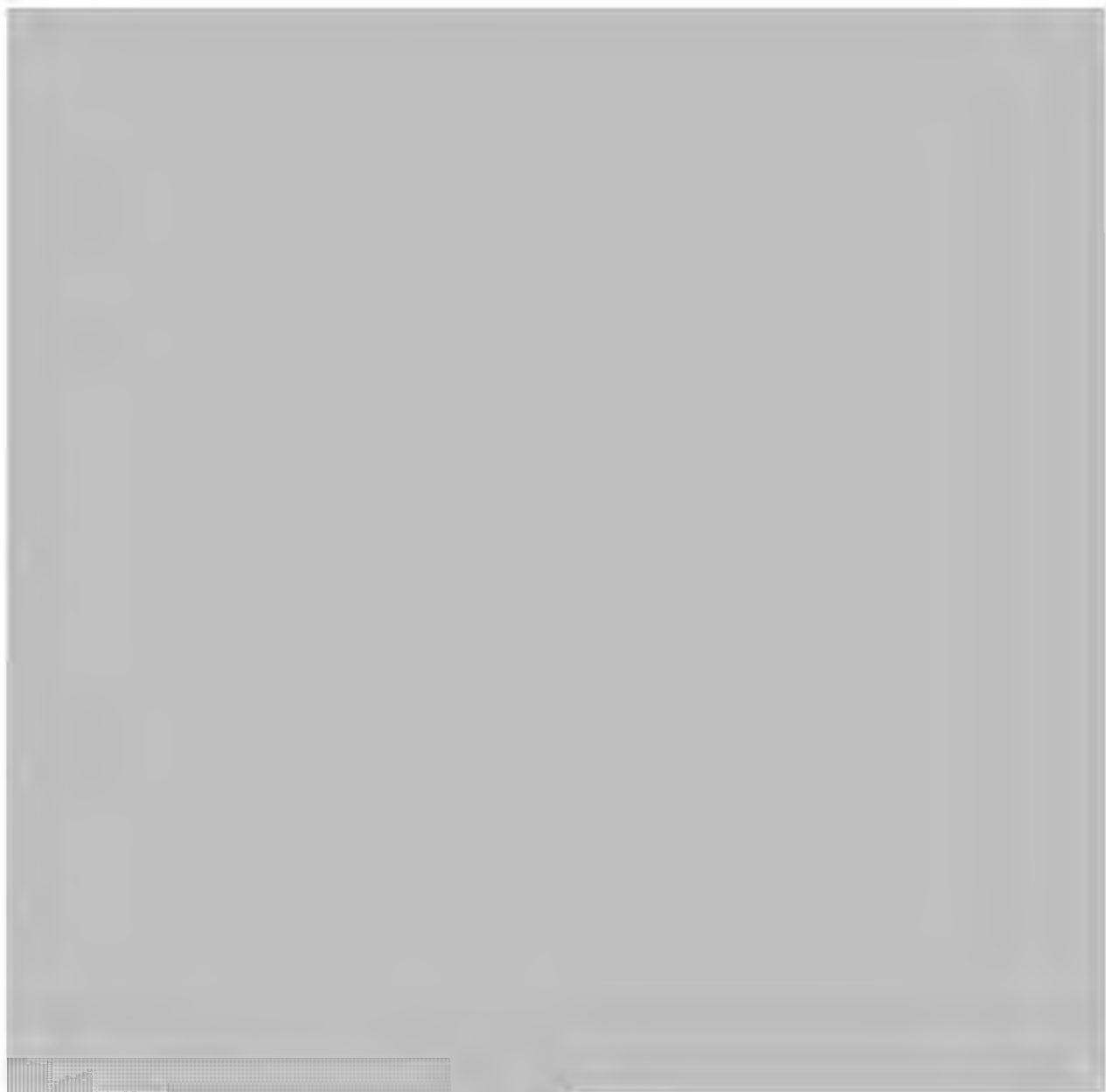
21(1)(a), 21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

s.21(1)(a)

s.21(1)(b)

s.23



ANNEX

PREPARED BY

Greg Yost
Counsel

Criminal Law Policy Section
613-941-4126

Joanna Wells
Counsel

Criminal Law Policy Section
613-948-7419

Hal Pruden
Counsel

Criminal Law Policy Section
613-941-4138

**Pages 74 to / à 76
are withheld pursuant to sections
sont retenues en vertu des articles**

21(1)(a), 21(1)(b), 23

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de la Loi sur l'accès à l'information**

**Pages 77 to / à 86
are withheld pursuant to section
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69(1)(e)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

**Pages 87 to / à 104
are withheld pursuant to section
sont retenues en vertu de l'article**

69(1)(a)

**of the Access to Information Act
de la Loi sur l'accès à l'information**



Lloyd Longfield

Member of Parliament for Guelph



July 22, 2016

The Honourable Jody Wilson-Raybould
Minister of Justice
House of Commons
Ottawa, ON
K1A 0A6

Dear Minister Wilson-Raybould,

I recently met with [REDACTED]
in my riding. In December of 2015 and January of this year [REDACTED] ran an anti-drunk/distracted
driving campaign, [REDACTED] to speak with the students about the
dangers of impaired and distracted driving.

This campaign was inspired by the Neville-Lake family, who lost four family members
(including their three children) in September 2015 in a collision involving an impaired driver.
[REDACTED]

I have enclosed 425 cards signed in support of this [REDACTED] initiative by her fellow students.
As her Member of Parliament I fully support her initiative to encourage the strengthening of
impaired driving laws in Canada and to further the education of impaired driving and its
consequences.

Sincerely,

[REDACTED]
Lloyd Longfield
Member of Parliament for Guelph

DIG-01 7186
MCUED5
140018
c c

s.19(1)

Hill Office
Room 702 Justice Building
House of Commons
Ottawa, Ontario K1A 0A6
Tel: (613) 996 4758
Fax: (613) 996-9922

lloyd.longfield@parl.gc.ca

Constituency Office
40 Cork St East
Guelph, ON
N1H 2W8
Tel: (519) 837-8276
Fax: (519) 837-8443

**Pages 106 to / à 132
are withheld pursuant to section
sont retenues en vertu de l'article**

69(1)(e)

**of the Access to Information Act
de la Loi sur l'accès à l'information**

I16-021439

271701

MCU-FILE

PA-REPLY

C.C

Minister of Public Safety



Ministre de la Sécurité publique

Ottawa, Canada K1A 0P8

SEP 28 2016

The Honourable Gordon Wyant, Q.C., M.P.P.
Minister of Justice and Attorney General
Legislative Building
Regina, Saskatchewan S4S 0B3

MINISTER OF JUSTICE
MINISTRE DE LA JUSTICE
2016 OCT -5 A 7 48
RECEIVED/RECU

Dear Minister Wyant:

Thank you for meeting with me on July 4, 2016, and for your follow-up correspondence offering further information on Bill C-226, as per my request.

I am pleased to hear that Saskatchewan has an interest in strengthening its criminal law and transportation offences to help reduce impaired driving in the province. Impaired driving continues to kill and injure more Canadians than any other crime. All too often, we see the tragic consequences of the decision to drive while impaired.

Your concerns regarding Bill C-226 fall under the purview of my colleague, the Honourable Jody Wilson-Raybould, Minister of Justice and Attorney General of Canada. I have taken the liberty of copying her on this response, for her information.

Drug-impaired driving is a priority for Public Safety Canada and we will continue to strengthen law enforcement's ability to respond and manage this issue. In our commitment to legalize and regulate marijuana, the creation of new, stronger laws to punish more severely those who operate a motor vehicle while under the influence of drugs is being examined. It is also necessary to ensure that law enforcement has the right tools, training and access to technology to better detect drug-impaired drivers. Public Safety Canada, the RCMP and Justice Canada are examining the policy, legislative and operational requirements to advance work on drug-impaired driving and to keep Canadian roads safe.

On June 30, 2016, the Government of Canada launched a Task Force on Marijuana Legalization and Regulation, made up of nine distinguished experts in public health, substance abuse, law enforcement and justice, chaired by the Honourable Anne McLellan, and vice-chaired by Dr. Mark Ware. Public consultations will inform the creation of a legalized and regulated marijuana regime.

Canada

-2-

Over the coming weeks and months, the Task Force will meet with provincial, territorial and municipal governments, Indigenous governments, experts in public health, substance abuse, criminal justice, law enforcement, and Canadian youth to better understand the issues that need to be addressed in a marijuana legalization framework.

The Government of Canada will continue to work with its provincial and territorial partners including Saskatchewan, and key stakeholders, to improve road safety in Canada.

Thank you again for writing on this important issue.

Yours sincerely,



The Honourable Ralph Goodale, P.C., M.P.

c.c.: The Honourable Jody Wilson-Raybould, P.C., M.P.
Minister of Justice and Attorney General of Canada

Pages 135 to / à 140
are withheld pursuant to section
sont retenues en vertu de l'article

69(1)(e)

of the Access to Information Act
de la Loi sur l'accès à l'information

Simard, Chloé

From: Warden, Tanya
Sent: October-20-16 12:31 PM
To: * SADMO/Admin
Cc: Yost, Greg; Thérien, Michelle; * CLP SGC/Admin; Pruden, Hal
Subject: FW: 2016-020843 - Draft Email to the Deputy Minister's FPT Colleagues on Bill C-226

Good afternoon,

As requested, please find the translated response which is found in the bilingual e-mail response attached regarding Bill C-226. Please note, when reviewing side by side, a small typo was found in the English version which has been corrected in the version attached. The word "besting" was corrected to "testing" in the second paragraph, 5th line.

Regards,

Tanya Warden
A/Executive Assistant/Adjointe exécutive
613-948-7423



Bilingual E-mail
from DM Bill ...

From: Valin, Martine
Sent: 2016-Oct-19 5:16 PM
To: Yost, Greg <Greg.Yost@justice.gc.ca>; Pruden, Hal <Hal.Pruden@justice.gc.ca>; Wells, Joanna <Joanna.Wells@justice.gc.ca>
Cc: Thérien, Michelle <Michelle.Therien@justice.gc.ca>; Vaillant, Maryse <Maryse.Vaillant@justice.gc.ca>; * CLP SGC/Admin <CLP_SGC_Admin@JUSTICE.GC.CA>
Subject: FW: 2016-020843 - Draft Email to the Deputy Minister's FPT Colleagues on Bill C-226

Please see urgent request to have this draft email translated. Must be done before end of day tomorrow.
Thanks

Martine

From: Simard, Chloé
Sent: October 19, 2016 4:59 PM
To: * CLP SGC/Office <CLPSGC_Office@justice.gc.ca>
Cc: * SADMO/Admin <SADMO_Admin@justice.gc.ca>
Subject: FW: 2016-020843 - Draft Email to the Deputy Minister's FPT Colleagues on Bill C-226

Hello,

DMO has requested that the e-mail below gets translated in French. Please provide to SADMO NO LATER than October 21st at 10 am.

Thanks,

Chloé Simard

Administrative Assistant | Adjointe Administrative
Senior Assistant Deputy Minister's Office |
Bureau du sous-ministre adjoint principal
Policy Sector | Secteur des politiques
5200 – 284 Wellington, Ottawa, Ontario, Canada, K1A 0H8
Chloe.simard@justice.gc.ca
Telephone | Téléphone 613.952.2200
Facsimile | Télécopieur 613.957.9949

From: Valin, Martine
Sent: October-07-16 2:50 PM
To: * SADMO/Admin <SADMO_Admin@justice.gc.ca>
Cc: Yost, Greg <Greg.Yost@justice.gc.ca>; Thérien, Michelle <Michelle.Therien@justice.gc.ca>; * CLP SGC/Admin <CLP_SGC_Admin@JUSTICE.GC.CA>
Subject: 2016-020843 - Draft Email to the Deputy Minister's FPT Colleagues on Bill C-226

E-mail below has been approved by Carole Morency, Director General and SGC

Martine Valin

Adjointe exécutive /Executive Assistant
Politique en matière de droit pénal / Criminal Law Policy
284 Wellington Street, Room 5093
Justice Canada
Ottawa, Ontario K1A 0H8
Tel: (613) 948-7423
Fax: (613) 957-6374
martine.valin@justice.gc.ca

From: Yost, Greg
Sent: October 7, 2016 1:45 PM
To: Glushek, Phaedra <Phaedra.Glushek@justice.gc.ca>
Cc: Martin, Karen <Karen.Martin@justice.gc.ca>; Thérien, Michelle <Michelle.Therien@justice.gc.ca>
Subject: FW: Draft email

Dear Colleagues,

Further to our recent discussions on Private Members Bills, I am writing to inform you of a Bill currently being considered in the federal Parliament. Bill C-226, *The Impaired Driving Act*, was introduced in the House of Commons by the Honourable Steven Blaney (Bellechasse—Les Etchemins—Lévis) on February 23, 2016. It received Second Reading on June 9, 2016 and was

referred to the Standing Committee on Public Safety and National Security. The Standing Committee began its hearings on the Bill on September 27, 2016.

Bill C-226 proposes to repeal all the provisions of the Criminal Code dealing with transportation offences and enact a new Part. It is virtually identical to Bill C-73 which was tabled in June 2015 but died on the Order Paper with the election call. Bill C-73 was the product of substantial federal-provincial-territorial consultations. The differences between the two Bills are that C-226 proposes to authorize random breath testing, would enact a 5 year mandatory minimum imprisonment for impaired driving causing death and would provide that sentences imposed in causing death cases must be served consecutively.

The Parliamentary Secretary to the Minister of Justice indicated at Second Reading that the Government supported the Bill with the exception of new and higher mandatory minimum terms of imprisonment.

The full text of the Bill can be found at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8118564>.

As the Bill, if enacted, could have effects on law enforcement, prosecutions and corrections, I would appreciate receiving your views.

William F. Pentney, Q.C.

From: Hébert, Nathalie
Sent: September-27-16 4:01 PM
To: * CLP SGC/Office <CLPSGC_Office@justice.gc.ca>
Cc: * SADMO/Admin <SADMO_Admin@justice.gc.ca>
Subject: FW: ACTION REQUEST / DEMANDE D'INTERVENTION - Email to the Deputy Minister's FPT Colleagues on Bill C-226
Importance: High

Please see tasking from DMO below with attached sample. Please provide the draft email to SADMO no later than **4 pm on Wednesday, September 28, 2016**.

Thanks,
Nathalie

Nathalie Hébert
Counsel and Special Advisor |
Avocate et conseillère spéciale
Senior Assistant Deputy Minister's Office |
Bureau du Sous-ministre adjoint principal
Policy Sector | Secteur des politiques
Department of Justice | Ministère de la justice
nathalie.hebert@justice.gc.ca
Telephone | Téléphone 613-957-3548
Facsimile | Télécopieur 613-957-9949

<< Objet OLE: Picture (Device Independent Bitmap) >>

<< Message: RE: Tasking for Policy Sector re C-226 >> << Fichier: Document de travail du CPFDP.DOCX >> << Fichier: CCOHR Discussion Paper.docx >>

From: Truong, Olivia

Sent: 2016-Sep-27 3:59 PM

To: McIntyre, Janet <Janet.McIntyre@justice.gc.ca>; Mileto, Joe <Joe.Mileto@justice.gc.ca>; * SADMO/Admin
<SADMO_Admin@justice.gc.ca>

Cc: Sheridan, Kathleen <Kathleen.Sheridan@justice.gc.ca>; Désormeaux, Suzanne

<Suzanne.Desormeaux@justice.gc.ca>; Boucher, Sophie <Sophie.Boucher@justice.gc.ca>; Leclerc, Caroline
<Caroline.Leclerc@justice.gc.ca>

Subject: ACTION REQUEST / DEMANDE D'INTERVENTION - Email to the Deputy Minister's FPT Colleagues on Bill C-226

<< Objet OLE: Picture (Device Independent Bitmap) >>

ACTION REQUEST / DEMANDE D'INTERVENTION

Deputy Minister's Office / Cabinet du sous-ministre

Lead DMO/Principal du CSM

Request Date/Date de la
demande

CCM #

Caroline Leclerc

September 27, 2016

2016-020843

Lead Sector/ Secteur responsable

Policy Sector

Subject/Sujet

Email to the Deputy Minister's FPT Colleagues on Bill C-226

Due to DMO/Date limite au bureau du SM

At/A

Thursday, September 29, 2016

2:00 PM

The Deputy Minister has asked that an email be prepared to send out to Federal-Provincial-Territorial Deputy Ministers on C-226 to inform them of the Bill and to provide them with a link.

Attached is a similar message that was recently prepared for and sent out by the DM on S-201.

Topic: Bill C-226

Materials Required:

- Draft Email
- Updated FPT Distribution list with emails

Please provide the necessary **consolidated** briefing materials to support the DM's attendance at this meeting.

*The lead sector is responsible to coordinate with the appropriate sectors, as necessary, and provide **one briefing note** to support the DM at this meeting by the above-noted deadline.*

Dear Colleagues,

Further to our recent discussions on Private Members Bills, I am writing to inform you of a Bill currently being considered in the federal Parliament. Bill C-226, *The Impaired Driving Act*, was introduced in the House of Commons by the Honourable Steven Blaney (Bellechasse—Les Etchemins—Lévis) on February 23, 2016. It received Second Reading on June 9, 2016 and was referred to the Standing Committee on Public Safety and National Security. The Standing Committee began its hearings on the Bill on September 27, 2016.

Bill C-226 proposes to repeal all the provisions of the Criminal Code dealing with transportation offences and enact a new Part. It is virtually identical to Bill C-73 which was tabled in June 2015 but died on the Order Paper with the election call. Bill C-73 was the product of substantial federal-provincial-territorial consultations. The differences between the two Bills are that C-226 proposes to authorize random breath testing, would enact a 5 year mandatory minimum imprisonment for impaired driving causing death and would provide that sentences imposed in causing death cases must be served consecutively.

The Parliamentary Secretary to the Minister of Justice indicated at Second Reading that the Government supported the Bill with the exception of new and higher mandatory minimum terms of imprisonment.

The full text of the Bill can be found

at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=F&Mode=1&DocId=8118564>.

As the Bill, if enacted, could have effects on law enforcement, prosecutions and corrections, I would appreciate receiving your views.

William F. Pentney, Q.C.

Chers collègues,

À la suite de notre récente discussion sur les projets de loi émanant de députés, je vous écris pour vous informer d'un projet de loi qui est actuellement à l'étude au Parlement fédéral. Le projet de loi C-226, intitulé la *Loi sur la conduite avec facultés affaiblies*, a été présenté à la Chambre des communes par l'honorable Steven Blaney (Bellechasse—Les Etchemins—Lévis) le 23 février 2016. Il a franchi l'étape de la deuxième lecture le 9 juin 2016 et a été renvoyé au Comité permanent de la sécurité publique et nationale. Le Comité permanent a commencé à tenir des audiences sur le projet de loi le 27 septembre 2016.

Le projet de loi C-226 propose d'abroger toutes les dispositions du *Code criminel* qui portent sur les infractions relatives aux moyens de transport et d'édicter une nouvelle partie. Il est pratiquement identique au projet de loi C-73 qui a été déposé en juin 2015,

mais qui est mort au feuilleton lors du déclenchement des élections. Le projet de loi C-73 est le fruit de consultations importantes entre le fédéral, les provinces et les territoires. Les différences entre les deux projets de loi résident dans le fait que le projet de loi C-226 propose d'autoriser le contrôle aléatoire d'échantillons d'haleine, édicterait une peine d'emprisonnement minimale obligatoire de cinq ans pour conduite avec facultés affaiblies causant la mort et prévoirait que les peines infligées pour ce type d'infractions doivent être purgées consécutivement.

Le secrétaire parlementaire de la ministre de la Justice a indiqué en deuxième lecture que le gouvernement appuyait le projet de loi, à l'exception des nouvelles peines d'emprisonnement minimales obligatoires plus sévères.

Vous pouvez consulter le texte du projet de loi à l'adresse suivante :

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Mode=1&DocId=8118564&Language=F>.

Comme le projet de loi, s'il est adopté, pourrait avoir des répercussions sur l'application de la loi, sur les poursuites et sur le système correctionnel, j'aimerais connaître votre point de vue.

William F. Pentney, c.r.

Sheridan, Kathleen

From: Pentney, William
Sent: 2016-Nov-04 1:00 PM
To: @ontario.ca'; @dpcp.gouv.qc.ca'; Saunders, Brian;
@gov.sk.ca'; @gov.pe.ca'; @justice.gouv.qc.ca';
s.19(1) @gov.nl.ca'; @gov.ns.ca'; @gnb.ca';
@leg.gov.mb.ca'; @novascotia.ca';
@gov.sk.ca'; @msp.gouv.qc.ca'; 'malcolm.brown@canada.ca';
@gov.bc.ca'; @gov.nt.ca'; @ontario.ca';
@ontario.ca'; @gov.ab.ca'; @gov.bc.ca';
@gov.yk.ca'; Pentney, William; William MacKay
Cc: @Ontario.ca'; @gov.sk.ca'; @gov.ns.ca';
@novascotia.ca'; @gnb.ca'; 'carole.chiasson@canada.ca';
Rudick, Catherine; @leg.gov.mb.ca'; 'Cheryl L Kerry';
@gov.bc.ca'; @gov.sk.ca'; @gnb.ca';
'diane.fournier2@canada.ca'; @gov.ab.ca'; 'heather.desantis@canada.ca';
@gov.bc.ca'; @GOV.NU.CA'; Monette, Karine (PPSC);
@gov.bc.ca'; @ontario.ca'; @ontario.ca';
@gov.bc.ca'; @msp.gouv.qc.ca'; @ontario.ca';
@ontario.ca'; @justice.gouv.qc.ca';
@dpcp.gouv.qc.ca'; @gov.ab.ca';
@msp.gouv.qc.ca'; @gov.sk.ca';
@ontario.ca'; @gov.ab.ca'; @gov.sk.ca';
@gov.nt.ca'; @gov.sk.ca'; @gov.yk.ca';
Désormeaux, Suzanne; @gov.pe.ca'; @gov.nl.ca'; @gov.nu.ca';
Subject: Bill C-226, The Impaired Driving Act // C 226, Loi sur la conduite avec facultés affaiblies

(le français suit l'anglais)

Dear Colleagues,

Further to our recent discussions on Private Members Bills, I am writing to inform you of a Bill currently being considered in the federal Parliament. Bill C-226, *The Impaired Driving Act*, was introduced in the House of Commons by the Honourable Steven Blaney (Bellechasse—Les Etchemins—Lévis) on February 23, 2016. It received Second Reading on June 9, 2016 and was referred to the Standing Committee on Public Safety and National Security. The Standing Committee began its hearings on the Bill on September 27, 2016. Inquiries regarding the Standing Committee's consideration of the Bill should be addressed to Jean-Marie David, Clerk of the Committee at 613-944-5635 or by email SECU@parl.gc.ca.

Bill C-226 proposes to repeal all the provisions of the *Criminal Code* dealing with transportation offences and enact a new Part. Most of the Bill's provisions are virtually identical to former Bill C-73 which was tabled in June 2015 but died on the Order Paper with the election call. Bill C-73 was the product of substantial federal-provincial-territorial consultations. The differences between the two Bills are that (1) C-226 proposes to authorize random breath testing, (2) Bill C-226 proposes a 5 year mandatory minimum imprisonment for impaired driving causing death (Bill C-73 proposed 6 years) and (3) Bill C-226 proposes that that sentences imposed in impaired driving causing death cases must be served consecutively.

The Parliamentary Secretary to the Minister of Justice indicated at Second Reading that the Government supported the Bill with the exception of new and higher mandatory minimum terms of imprisonment.

The full text of the Bill can be found

at: <http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8118564>.

As the Bill, if enacted, could have effects on law enforcement, prosecutions and corrections, I would encourage you to review the Bill and consider whether you wish to participate in the Parliamentary process.

William F. Pentney, Q.C.

s.13(1)(c)

s.14

Collègues,

À la suite de notre récente discussion sur les projets de loi émanant de députés, je vous écris pour vous informer d'un projet de loi qui est actuellement à l'étude au Parlement fédéral. Le projet de loi C-226, *Loi sur la conduite avec facultés affaiblies*, a été présenté à la Chambre des communes par l'honorable Steven Blaney (Bellechasse—Les Etchemins—Lévis) le 23 février 2016. Il a franchi l'étape de la deuxième lecture le 9 juin 2016 et a été renvoyé au Comité permanent de la sécurité publique et nationale. Le Comité permanent a commencé à tenir des audiences sur le projet de loi le 27 septembre 2016. Toute demande de renseignements concernant l'examen du projet de loi par le Comité permanent devrait être adressée à Jean-Marie David, greffier du Comité au 613-944-5635 ou par courriel SECU@parl.gc.ca.

Le projet de loi C-226 propose d'abroger toutes les dispositions du *Code criminel* qui portent sur les infractions relatives aux moyens de transport et d'édicter une nouvelle partie. La plupart des dispositions du projet de loi sont pratiquement identiques à celles contenues dans le projet de loi C-73 qui a été déposé en juin 2015, mais qui est mort au feuillet lors du déclenchement des élections. Le projet de loi C-73 est le fruit de consultations importantes entre le fédéral, les provinces et les territoires. Voici quelles sont les différences entre les deux projets de loi : (1) le projet de loi C-226 propose d'autoriser le contrôle aléatoire d'échantillons d'haleine, (2) le projet de loi propose une peine d'emprisonnement minimale obligatoire de cinq ans pour conduite avec facultés affaiblies causant la mort (le projet de loi C-73 proposait une peine de six ans) et (3) le projet de loi C-226 propose que les peines imposées dans les affaires de conduite avec facultés affaiblies causant la mort doivent être consécutivement purgées.

Le secrétaire parlementaire de la ministre de la Justice a indiqué en deuxième lecture que le gouvernement appuyait le projet de loi, à l'exception des nouvelles peines d'emprisonnement minimales obligatoires plus sévères.

Vous pouvez consulter le texte du projet de loi à l'adresse suivante :

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Mode=1&DocId=8118564&Language=F>.

Advenant son adoption, le projet de loi pourrait avoir des répercussions sur l'application de la loi, sur les poursuites et sur le système correctionnel, je vous encourage à consulter son texte et à déterminer si vous souhaitez participer au processus parlementaire.

William F. Pentney, c.r.

**Pages 149 to / à 151
are withheld pursuant to sections
sont retenues en vertu des articles**

13(1)(c), 14

**of the Access to Information Act
de la Loi sur l'accès à l'information**

**Pages 152 to / à 163
are withheld pursuant to section
sont retenues en vertu de l'article**

69(1)(e)

**of the Access to Information Act
de la Loi sur l'accès à l'information**